Supreme Court, U.S.
FILED
OCT 5 1995
CLERK

No. 95-224

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1995

BARBARA KRAEBEL Doing Business As
BARKLEE REALTY COMPANY,

Petitioner,

-against-

FELICE MICHETTI, As Commissioner Of
The New York City Department Of Housing
Preservation And Development, and
THE NEW YORK CITY DEPARTMENT OF
HOUSING PRESERVATION AND DEVELOPMENT,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

REPLY BRIEF

Barbara Kraebel D/B/A
Barklee Realty Company
Petitioner pro se
60 East 42nd Street - #1146
New York, New York 10165
Telephone: (212) 831-1012

October 5, 1995

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I. RESPONDENTS' BRIEF IN OPPOSITION MISREPRESENTS THE RECORD IN TWO SIGNIFICANT PARTICULARS.

Respondents have never had any substantive meeting with Petitioner concerning the Violations*, as implied by Brief In Opposition (Resp. Opp.) FN 3 p. 7. The only meetings Petitioner has ever had with Respondents with respect to the Violations were with HPD's Public Interviewers, who had no knowledge of building conditions at the Property and no authority to remove any of the Violations. JA:56** par. 88; JA:133-134 pars. 17-18.

Respondents misstate the procedures for obtaining maximum base rent increases under State procedures when HMC Violations are reported against a property (Resp. Opp. p. 20). In such circumstances the owner must both certify to correction and provide documentary proof of correction or grounds for challenge. JA:184-185 pars. 36-38; JA:266.

II. RESPONDENTS' ABUSE OF THEIR AUTHORITY OVER HOUSING MAINTENANCE CODE VIOLATIONS HAS A CHILLING EFFECT ON THE CONSTITUTIONALLY-PROTECTED RIGHTS OF PROPERTY OWNERS.

Respondents' contention that only First Amendment rights are chilled by government excess is not well taken. Respondents' abuse of their authority over HMC Violations has a chilling effect on the rights of property owners when such owners can neither comply with Respondents' unreasonable requirements and unworkable procedures nor

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* Terms herein are as defined in the Petition For A Writ Of Certiorari.

** Numbers after JA: refer to pages in the Joint Appendix to the Second Circuit Court of Appeals.

challenge them without unacceptable risk. This chilling effect has contributed substantially to owner abandonment and City confiscation of vast tracts of privately-owned housing in New York City low income neighborhoods through the years. JA:62-65 pars. 120-131; JA:133 pars. 14-16.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the Petition For A Writ Of Certiorari, a writ of certiorari should be issued to review the opinion and judgment of the Second Circuit Court of Appeals.

Respectfully submitted,

Barbara Kraebel D/B/A
Barklee Realty Company
Petitioner pro se
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New York, New York 10165
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